

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 137 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DIST.CO.OP. MILK PRODUCERS' UNION LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 137 of 1989
MR JP SHAH for Petitioner No. 1
MR AKIL KURESHI for MR MANISH R BHATT for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, five questions have been referred for our opinion in respect of assessment year 1981-82.

At the instance of the revenue, one more question is referred for our opinion in respect of the same assessment year.

2. We have heard Mr. J.P. Shah learned counsel for the assessee and Mr. Akil Kureshi learned counsel for the revenue.

3. Question No.1 referred at the instance of the assessee is as under:-

(i) "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the contribution made as a statutory liability under section 69 of the Gujarat Rajya Sahakari Coop. Societies Act is not deductible as a revenue expenditure u/s.28/37 of the Income Tax Act?"

Our attention is invited to the decisions of this Court in the case of this very assessee in 203 ITR 601, in the case of CIT vs. Kaira District Coop. Milk Producers' Union Ltd. (1994) 209 ITR 898 and also in the case of CIT vs. Kaira District Coop. Milk Producers' Union Ltd. 247 ITR 314 wherein this Court has held that contribution to the Gujarat Cooperative Educational Fund under section 69 of the Gujarat Cooperative Societies' Act is allowable as business expenditure.

Following the aforesaid decisions, our answer to question No.1 is in the negative i.e. in favour of the assessee and against the revenue.

4. Questions No.2, 3 and 4 referred at the instance of the assessee are as under:-

(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in the interpretation and application of section 35-C of the Income Tax Act, 1961 ?

(iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that entire expenditure of Rs.57,48,006/- was not eligible for weighted deduction u/s.35-C of the Income Tax Act ?

(iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of agricultural animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s.35-C of the Income Tax Act ?

Our attention is invited to the decision dated 2-7-2001 of this Court in Income Tax Reference No.32 of 1987 wherein these very questions were considered and this Court answered these questions in favour of the assessee and held that the entire expenditure was eligible for deduction under section 35-C of the Act.

Following the said decision, our answer to questions No.2, 3 and 4 is in the negative i.e. in favour of the assessee and against the revenue.

5. Question No.5 referred at the instance of the assessee is as under:-

(v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that Explanation 2 to section 43 (1) was not applicable and that no depreciation was available on Road Milk Tankers of Rs.19,32,300/- supplied by Indian Dairy Corporation under the Operation Flood Scheme No.II?

Our attention has been invited to the decision dated 24-12-1999 of this Court in Income Tax Reference No.290 of 1984 which was the case of this very assessee. This Court after considering the decision of the Apex Court in CIT vs. P.J. Chemicals Ltd. 210 ITR 830 answered the question in favour of the assessee because subsidy of the nature we are concerned with, does not partake of the incidents which attract the conditions for their deductibility from "actual cost".

Following the aforesaid decisions, our answer to question No.5 is also in the negative i.e. in favour of the assessee and against the revenue.

6. Coming to question referred at the instance of the revenue, the same is as under:-

"Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law

and on facts in allowing relief u/s.35-C in respect of 10% of the expenditure?"

In view of the opinion expressed by this Court in the decision dated 2-7-2001 in Income Tax Reference No.32 of 1987 that 100% of the amount is allowable under section 35-C(1) of the Act and which decision has been followed by us while answering question No.2 to 4 at the instance of the assessee, this question has to be answered in the negative i.e. in favour of the assessee and against the revenue.

7. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J)

(D.A. Mehta, J)

zgs/-